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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/649,399    08/28/00    TRAVERS

J    44123/14

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PM82/0731

EXAMINER
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NOVOSAD, J	
ART UNIT	PAPER NUMBER

3634

DATE MAILED:

07/31/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/649,399

Applicant(s)

TRAVERS ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restriction***

Applicant's election *without* traverse of Species I (Figures 1-3) in Paper No. 6 is acknowledged. Claims 5-8 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. (Note page 6, lines 5-9 directed to the use of the silverware compartment.)

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the silverware compartment attached to the tray (30), as in claims 9-12 and 17, *must* be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

It is noted that applicant has stated that claims 9-12 read on Species I. However, the drawings do not show the silverware compartment (62), of claims 9 and 17, being "readily detachable or attachable" to the tray (30) of Species I, i.e., Figures 1-3 but rather the drawings show the silverware compartment attachable to the tray (50) of Species II (note particularly Figure 4) and merely fitted within the dish drainer (10).

### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. Accordingly, "is disclosed which provides", in line 1, should be deleted and it is suggested that --has-- be inserted therefor and "present invention" in line 8 should be deleted.

### *Claim Objections*

Claims 1, 3, 13-15, and 17 are objected to because of the following informalities:

In claim 1, line 6, it is suggested that "it" be changed to --the tray--.

In claim 3, line 2, it is suggested that "where" be changed to --wherein--.

In claim 3, line 3 (**both** occurrences), claim 13, line 7, 8, **and** 11, claim 15, line 2, and claim 17, line 3, it is suggested that "its" be changed to --the--.

In claim 12, line 2, it is suggested that "with" be changed to --when-- **and** that "in its" be changed to --is in the--.

In claim 13, lines 1-2, it is suggested that "comprising of;" be changed to --comprising:-- or --comprised of:-- (Note the colon, i.e., --:--.)

In claim 13, line 4, it is suggested that "together defining" be changed to --which together define--.

In claim 13, line 11, and claim 14, line 2, "this" should be changed to --the--.

In line 1 of claims 14, 15, and 17, the preamble does not coincide with the preamble of claim 13, from which these claims depend.

In claim 17, line 3, it is suggested that "also" be changed to --being--.

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Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13, line 5, the recitation "having a first compacted storage configuration and a second deployed configuration" renders the claim indefinite since it is unclear what structure constitutes these "configurations", i.e., it appears inaccurate to recite that the structure of the tray has these configurations but rather it appears accurate to state that the tray is moveable, bendable, etc., between these two configurations. *Further*, the recitation "the tray being in its storage configuration", in lines 8-9, appears as though the phrase should be deleted since the recitation is incomplete.

The recitation "too small" in lines 10-11 of claim 13, renders the claim indefinite since the term "too" is a relative phrase.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Krause '957.

Krause '957 discloses a combination plastic dish rack and plastic tray assembly comprising a dish drainer (24, 12, and 20, between 16 and 64 - see left quarter portion of Figure 2) having an interior and a base (12); a tray (22, 26, 15, 14, 30, 13, and 28, between 62 and 16 - see right three quarter portions of Figure 2) having a footprint, i.e., 13, 14, and 15, larger than the base (12) of the drainer when the tray is in a first deployed configuration (Figure 2) and the tray being compactable so as to fit entirely in the interior of the drainer (see Figure 1) when in a second storage configuration; the tray further comprising a plurality of live hinges (16, 17, and 18) about which the tray is folded so as to convert the assembly between the deployed and storage configurations; the assembly further comprising a silverware compartment (68) that is readily detachable from or attachable to the tray by first (90 and 91) locking components defining pegs disposed on the tray which engage second (92 and 93) locking components defining holes disposed in the compartment (68) and the silverware compartment (68) fitting entirely within the interior of the drainer when the tray is in the storage configuration.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Patadia *et al.* '676.

Patadia *et al.* '676 disclose a dish drainer assembly comprising a dish drainer (56 and 19 - see right third portion of Figure 1) having an interior and a base (19); a tray (55, 17, 18 - see right two third portions of Figure 1) having a footprint, i.e., 17 and 18, larger than the base (19)

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of the drainer when the tray is in a first deployed configuration (Figure 1) and the tray being compactable so as to fit entirely in the interior of the drainer (see Figure 8) when in a second storage configuration; the tray further comprising a plurality of live hinges (31-34) about which the tray is folded so as to convert the assembly between the deployed and storage configurations.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krause '957, alone.

Krause '957 discloses the assembly as advanced above.

The claims differ from Krause '957 in requiring a package sized to contain the drainer and tray when the tray is in the storage configuration.

Although Krause '957 does not disclose a package which contains the drainer and tray, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have provided a package to contain the assembly when the tray is in the storage configuration, thereby decreasing shipping and storage space, allowing for ease in economy and manufacture and ease to the consumer.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schaefer, Lee, Heymann *et al.*, Craft *et al.*, Lippisch *et al.*, Hubbard, and Kaufman show various assemblies having a tray and a drainer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.



Jennifer E. Novosad/jen  
July 27, 2001

DANIEL P. STODOLA  
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